

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA]	
]	
v.]	No. 05-CR-30042-MLW
]	
CESAR CRUZ and]	
RICARDO DIAZ]	

**GOVERNMENT’S MOTION *IN LIMINE* REGARDING
DEFENDANT CESAR CRUZ’S RELIGIOUS AFFILIATIONS**

The United States hereby submits this motion *in limine* in anticipation of trial in the above-captioned matter.

Background

The defendants are accused of conspiring to distribute, and distributing, cocaine and, as to defendant Ricardo Diaz, distributing cocaine base. In the course of discussions with potential government witnesses and counsel for defendant Cesar Cruz (“CRUZ”), it has become clear that CRUZ has religious beliefs that are deeply held, and to which he often refers in conversation. For example, during a telephone call recorded on January 7, 2006, CRUZ makes several references to his desire to pray, its affect on him, and his desire for a Bible. *See Prelim. Trans.* at 8-9 (pages attached).

Argument

If CRUZ testifies, he should be prevented from making any reference to his religious beliefs that would have the effect of enhancing his credibility, and should similarly be prevented from taking the stand with a Bible in hand, should he seek to do so. Rule 610 of the Federal Rules of Evidence specifically states that “[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the

witness' [sic] credibility is impaired or enhanced." *See also, e.g., Gov't of Virgin Islands v. Petersen*, 553 F.2d 324, 328 (3rd Cir. 1977) (in murder prosecution, relying on Rul 610 to affirm trial court's exclusion of evidence that defendant was Rastafarian, and that Rastafarians are opposed to violence).

Respectfully submitted,

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Andrew E. Lelling
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Date: April 24, 2006

1 CESAR: Because they accused me after I left and came over here. It wasn't until
2 laaater when they charged me. Cause I didn't come over here because that
3 had happened.
4 FEM: I know! That's why I told the lawyer, "he didn't know anything about that.
5 He came over with no problems, he didn't have a record or anything bad
6 over there. He didn't even know about it until they told him right in front
7 of you about anything over there, when they told him right in front of
8 you!"...
9 CESAR: I had already told the lawyer I hadn't been in Florida.
10 FEM: Really? Well you have to be honest with him, you see? Because he has to
11 know!...
12 CESAR: Oh man. I was... because that day when the police jumped in, I had gone
13 in to turn off the TV when CARLI had said to me: "You know what
14 Poppa? I want you to go back to church". And that's when later, at about 4
15 in the morning or so, I got up to drink the soda, and God got me to pray.
16 FEM: God got him to pray?
17 CESAR: Got me! I felt weird, I said, this is weird. Cause you know, I was saying to
18 myself, how can this be, but how? But the thing is I didn't get what it was
19 about in time. You see? Then when I got up from praying, not even three
20 minutes had gone by, when RICHIE came in to the room.
21 FEM: Wow. I didn't know you got up, cause I would have gotten up with you to
22 pray with you.
23 CESAR: Man. Last night. This morning - I prayed this morning.
24 FEM: What about us - Last night, myself, CARLOS and MILDRED. We were
25 praying here all night, meditating, you know, for everything to come out
26 all right.
27 CESAR: I knelt on my knees! At about four in the morning, to pray. And man,
28 afterwards I slept like a baby. Yeah!
29 FEM: That's good.
30 CESAR: I'm waiting for them to give me a bible or something.

1 FEM: Oh Yeah? You have a bible in English in one of these boxes. I'm gonna
2 give it to MILDRED -- It says Holy Bible.
3 CESAR: Like a New Testament, right?
4 FEM: I don't know, it's like a blue one, hardcover. And it says Holy Bible, and
5 MILDRED said she was looking for a Bible, so there you have it, now
6 there's no excuse.
7 CESAR: They're showing a movie over here.
8 FEM: Aw, sheez, when they come back from school, I'm gonna have to explain
9 things to them, because they "is poppa coming home today? Is poppa
10 coming home today?"
11 CESAR: Well, you explain to them, I mean not like that, but
12 FEM: Well I'll tell them that you're going to be out for awhile. That they have to
13 behave. And they're acting, like hyper. Man! "When I tell your dad, you'll
14 see!" The baby acts like nervous. Like he wakes up like nervous.
15 CESAR: Yeah, cause don't you see that when they knocked down the door, he was
16 the first one to get up.
17 FEM: I know, that's why. And he's like nervous. All he says to CONSUELO is
18 like "boom, boom!, poppa, poppa!" That's what he says. And he looks at
19 me like... Listen. You're supposed to call EVIE at her cousin's house.
20 CESAR: Who? EVIE? Where, at the 788 number?
21 FEM: [ASIDE TO SOMEONE ELSE - A FEMALE] CICI - where at, at 788?
22 She doesn't know. She'll tell you in a minute, she's looking for it.
23 CESAR: At 788-6687 right?
24 FEM: 788-6687. Yeah, that's the one. He remembers the last numbers. [laughs]
25 CESAR: So yeah. But what that does is it makes enemies, you know?
26 FEM: I know, but remember they warned you that there was gonna be a trap.
27 Who knows if that was the trap? Because with all those cases, you got out
28 of the 399 and out of some money that you owed.
29 CESAR: But they dropped those right?
30 F: Exactly, the only thing left is the violation, and, and, what about that pipe
31 thing?